IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7872 OF 2006

Sant Damaji Sahakari Sakhar
Karkhana Ltd., .. Petitioner.

vs.

Vidyanand Co-op. Bank Ltd.,
& Ors. . .. Respondents.

Mr. A.D. Desai for petitioner.
Mr. Anand S. Kulkarni for Respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 11th December, 2006.

P.C.

. The present petitioner is a sugar factory which is a specified co-operative society whereas the respondent no. 1 is a co-operative bank. By the instant petition, the petitioner is challenging the judgement and order passed in appeal by the Maharashtra State Co-operative Appellate Court, Mumbai, Bench Pune, which confirms the judgment and order passed by the Co-operative Court decreeing about 600 disputes in favour of the respondent no. 1. In the disputes so filed, the respondent no. 1 Bank claimed various amounts which were advanced to

the petitioner or to the other debtors for the purchase of bullock carts. I am informed that the total amount exceeds Rs. 3 crores. Taking into consideration various admissions given by the present petitioner, awards are passed on admissions by the Co-operative Court. The admissions are in the nature of resolutions passed by the petitioner Karkhana about its liability to pay the dues of the Bank, issuance of post dated cheques for the amounts payable to the Bank and communications / representations made to various financial institutions and the State Government about the petitioner's liability to pay the amount. Even before this Court it is not in dispute that the petitioner who claims to be a sick industry is indebted to the respondent no. 1 Bank. In the earlier round of litigation when the Co-operative Appellate Court had rejected stay application moved by the petitioner seeking stay of the award passed by the Co-operative Court, a statement was made by the learned counsel appearing for the petitioner in Writ Petition No. 4578 of 2006 which has been disposed of by an order dated 20.7.2006 that "the Petitioner Karkhana is willing to stand by its commitment to pay the entire loan amount disbursed to all these contractors and which amount comes to around Rs. 3 crores." It is reiterated that it is an admitted position all throughout that the petitioner is liable to pay the amount to the Bank

towards recovery of loan either granted to the petitioner and/or to its contractors and the repayment of which is guaranteed by the petitioner. In this factual background of the liability being admitted by the petitioner, a question of law is sought to be raised that the Co-operative Court could not have passed an award on admission of the present petitioner as there is no provision in the Co-operative Societies Act or the Rules framed thereunder for passing of an award on admission. It is contended that Civil Procedure Code has no application to disputes filed under the Co-operative Societies Act. Reliance is placed on the judgment of the learned Single Judge of this Court in the case of Murlidhar Datoba Nimanka and others vs. Harish Balkrushna Latane and others, reported in 2003 (4) Mh.L.J. 196. A perusal of the said judgment reveals that altogether different issue fell for consideration of the learned Single Judge wherein the Court observed that the provisions of Civil Procedure Code are not applicable to the proceedings before the Co-operative Court while dealing with the dispute under the Maharashtra Co-operative Societies Act though in relation to such procedure wherever the provisions of law contained in the said Act and the said Rules are totally silent, the principles of the Civil Procedure Code can be made applicable but at the same time, it would not mean that the Co-operative

Court will enjoy the powers specifically given to the Civil Court like those of inherent powers, review powers or the powers imposing penalty like striking off the defence, under Order 39, Rule 11 of Civil Procedure Code. In the present case, it is the submission on behalf of the petitioner that there is no provision in the Co-operative Societies Act and the Rules framed thereunder in relation to passing of the decree on admission. Per contra, the learned counsel appearing for the respondent no. 1 bank has submitted that in the absence of a specific provision in that regard, would permit application of provisions of Civil Procedure Code. It is submitted that Section 58 of the Evidence Act itself lays down that no fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. The submission is that if admitted facts are not to be proved, why for the dispute to be dragged further for adducing evidence. The submission is well merited. Once the petitioner admits its liability to repay the loan to the respondent no. 1 bank, nothing further is required to be proved by the bank and hence, the principle underlined under Order 12 Rule 6 of CPC can be very well made applicable to the proceedings under the

Co-operative Societies Act.

2. It is alternatively submitted that rule 77 E of the Maharashtra Co-operative Societies Rules, 1961 does in fact admits of power and jurisdiction of the Co-operative Court to pass an award on admission. Reliance is placed on sub-rule (3) which reads thus :-

> "Where the opponent appears and the disputant does not appear when the dispute is called on for hearing, the Registrar or the Court may make an order that the dispute be dismissed, unless the opponent admits the claim or a part thereof, in which case the Registrar or the Court, as the case may be, may make an order against the opponent upon such admission and where, part only of the claims is admitted, may dismiss the dispute so far as it relates to the remainder."

Placing reliance on sub-rule (3) it is submitted that even if the dispute is absent, still that part of the claim which is admitted can be decreed. I am in agreement with the submission made by the learned counsel for the respondent no. 1 Bank.

3. In the result, I hold, in the first place, that there is power with the Co-operative Court to

pass decree on admission and the same is reflected from Rule 77E sub-rule (3). In the second place, I conclude that even assuming that there is no such power with the Co-operative Court to pass a decree on admission, the principle underlined in Order 12 Rule 6 can be very well applied.

4. In the result, as there is no merit in the petition, the same is dismissed.

(A.P. Deshpande, J.)